VICKI D. GRAHAM

IBLA 86-21 Decided April 11, 1988

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting oil and gas lease offer. W-93127.

Reversed.

1. Evidence: Presumptions

   A presumption of regularity supports the official acts of public officials in the proper discharge of their duties. It may be overcome by probative evidence to the contrary.

2. Notice: Generally--Oil and Gas Leases: Generally--Oil and Gas Leases: Offers to Lease

   BLM may reject a simultaneous oil and gas lease offer pursuant to 43 CFR 3112.5-1(c) where the applicant fails to return three executed copies of the lease offer and stipulations within the time provided in the BLM notice. Here, it was error to reject a purportedly untimely sub-submission of lease offer forms and stipulations because BLM effectively extended the time for such submission.

APPEARANCES: Arthur M. Meyer, Jr., Esq., Dallas, Texas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

On October 2, 1985, Vicki D. Graham, through her attorney, filed a notice of appeal with the Wyoming State Office, Bureau of Land Management (BLM). The notice stated that Graham was appealing a decision of the Wyoming State Office to refuse to accept her simultaneous oil and gas lease offer W-93127 for parcel WY-143. The notice of appeal further stated that appellant had endorsed and forwarded the proper number of copies of the lease offer and stipulations and that she had received no notice as to the unacceptability of her filings until September 9, 1985, when she received a check refunding her advance rental.

A review of the case file shows that the SW^, sec. 25, lots 1 and 2, sec. 31, and the NE^, sec. 35, T. 41 N., R. 63 W., sixth principal meridian, Niobrara County, Wyoming, were offered for lease under the simultaneous leasing system in February 1985. The outcome of the drawing was that Graham's application was selected with first priority. By notice dated May 7, 1985, she was informed of this fact and sent lease offer forms. The notice stated in part:

> In accordance with Regulation 43 CFR 3112.6-1(a), we are enclosing three copies of the lease agreement together with required stipulations (if applicable) for execution and return to this office. * * * All copies of the executed lease agreement, all copies of the executed stipulations, and the duplicate copy of this letter must be returned to this office within 30 days from the date of receipt of this decision. * * *
>
> If the original and all copies are not returned within the time allowed, you will have failed to comply with the regulations per 43 CFR 3112.5-1(c), and your offer will be rejected without further notice.

A return receipt card shows that this letter and the accompanying lease forms were received by appellant May 10, 1985.

On May 20, 1985, BLM received a return mailing from Graham. Although appellant claims on appeal that all three copies of the lease form and stipulations were signed and returned by her, only the executed original is contained in the file. An additional copy of BLM's May 7, 1985, Notice was mailed May 22, 1985, which includes a note typed on the bottom stating: "Copies of offer and stipulations are returned for signature where checked in red. Please sign and return to this office as quickly as possible." This copy of the notice suggests that the forms were mailed to appellant, however the file does not contain a return receipt card establishing that they were mailed and either received by her or returned undelivered. A handwritten note on an accounting receipt states that as of August 8, 1985, "all copies of offer and stips not returned," and apparently for this reason appellant's rental fee was scheduled for refund.

[1] At the outset we must reject appellant's contention that she exe- cuted and returned all three copies of the lease form and stipulations. A presumption of regularity supports the official acts of public officials in the proper discharge of their duties. Yates Petroleum Corp., 91 IBLA 252 (1986); Carmelita M. Holland, 87 IBLA 175 (1986). It may be overcome by probative evidence to the contrary. Ralph C. Memmott, 88 IBLA 372 (1985). Applied in the present case, the presumption of regularity requires us to find that appellant was sent three copies of the lease form and stipulations and that, as evidenced by the presence of only one copy of each in the file, only one executed set was returned to BLM. What subsequently occurred is not clear from the record. Normally, a return receipt card would operate as proof of mailing and either delivery to the addressee or constructive ser- vice. See J-O'B Operating Co., 97 IBLA 89 (1987). In this case, absent a second return receipt card evidencing mailing and receipt of BLM's May 22,

1985, Notice, no conclusion as to the fate of the other two copies of the lease form and stipulations is possible.

Appellant's alternative argument is that even if she returned only one copy of the lease form and stipulations, she satisfied all regulatory requirements governing lease applications, offers, and the awarding of non- competitive leases.

[2] As appellant notes, the requirement to furnish BLM with three cop-ies of the lease agreement and stipulations is not prescribed by regulation. See 43 CFR 3112.6-1. 43 CFR 3112.6-1(a) requires BLM to forward a lease agreement consisting of a form approved by the Director, and stipulations to the successful applicant. It is the return of the signed lease agreement within 30 days of receipt that constitutes an applicant's offer to lease. The BLM Manual at section 3112.61, Lease Offer, directs the State Office to complete three copies of a lease offer form and stipulations and to transmit these to the selected applicant by certified mail requiring execution and return within 30 days of receipt. The BLM Manual Handbook 3112.1 states that an applicant who fails or refuses to return the lease offer within 30 days is automatically disqualified to receive a lease, and that the offer is to be rejected without further notice. H-3112-I VI.C.

Since BLM has the responsibility for preparing the lease agreement for transmittal to the successful applicant, the fact that the applicable reg- ulation refers to "a lease form" and "a lease agreement" would not preclude BLM from preparing a lease offer for execution which consists of three cop- ies of the lease form, or from rejecting an application pursuant to 43 CFR 3112.5-1(c) where only one of three copies is returned by the applicant within the time provided. See F. Peter Zoch, 60 IBLA 150, 153 (1981).

BLM need not have a regulation on the books to back up every act it takes. Were the opposite true, 43 CFR would be considerably larger than a three-volume work. This does not mean that the agency has unbridled power to impose requirements on members of the public. Both this Board and the courts will hold BLM to show that in any given case its actions are not arbitrary, capricious, an abuse of discretion, or otherwise not in accord- ance with law. Here, since we are dealing with a requirement imposed on a lease offeror by individual notice rather than by regulation, the issue pre-sented is whether the agency action was arbitrary, capricious, or an abuse of discretion. 1/ Clearly it was not.

The three-copy requirement is uniformly applied by BLM to all offerors under the simultaneous oil and gas leasing system. The apparent administra-tive basis for this requirement is set out in the BLM Manual at H-3112-1, III. 7.d. and 8, the provisions of which insure a properly completed copy of

1/ The Board is not limited it its appellate function to ascertaining whether agency action is arbitrary or capricious. Indeed, the Board possesses de novo review authority, consistent with the provisions of 43 CFR 4.1, 5 U.S.C. | 557(b) and 43 U.S.C. | 1705(a)(5).

the lease offer will be made available to the State Office, the lessee, and the surface managing agency.

In Bill Mathis, 90 IBLA 353 (1986), the Board reviewed BLM's rejection of an over-the-counter oil and gas lease offer for failure of the offeror to timely file signed stipulations. No regulation prescribed a time limit for the return of such documents. The Board observed the well-recognized propo-ition that the Secretary has the discretionary authority to require the exe-cution of special stipulations as a condition precedent to issuance of a lease in a national forest to protect environmental and other land use val- ues, and went on to hold that the "exercise of that authority necessarily includes the ability of BLM to establish reasonable time limits for a lease offeror to submit the signed lease and stipulations." The 30-day time limit set by BLM in its letter to Mr. Mathis was held to be reasonable, though the Board remanded the matter to BLM to ascertain whether the late filing could be accepted under the provisions of an agency regulation permitting the acceptance of late filings in some circumstances.

In this case, appellant makes no showing that BLM's three-copy require-ment was in any way unreasonable. In the absence of evidence that the require-ment was arbitrary, capricious, or an abuse of discretion, the BLM decision should be affirmed. However, considering the facts of this case, we find that BLM improperly rejected appellant's offer because BLM's subsequent instructions operated to change the due date for filing the remaining two copies of the lease forms.

The record shows that on May 22, 1985, when BLM resent its notice of May 7, 1985, it included a note which advised appellant as follows: "Cop-
ies of offer and stipulations are returned for signature where checked in red. Please sign and return to this office as quickly as possible."

This indicates that as of May 22, 1985, appellant had not returned the number of executed copies of the lease offer and stipulations as required by BLM's initial notice. BLM did not, indeed it could not, reject appellant's lease offer on May 22, 1985, because appellant's 30 days for submission of the required forms had not yet run. The signed return receipt card shows that appellant received the May 7 Notice on May 10, 1985. Therefore, appel-lant had until June 10, 1985, to return the lease forms. When the executed original was returned to BLM on May 20, 1985, appellant had 20 days remain- ing in which to file the copies. Rather await the end of the 30-day period to reject the offer, BLM undertook to return the unsigned copies to appel- lant with the apparent expectation that the executed copies would be returned within the 30-day period originally allowed for submission of required forms. When BLM mailed the notice of May 22, 1985, containing the copies of the lease form, appellant had 18 days to return the copies in com-pliance with the May 7 Notice. Even though BLM was not obligated to return the lease forms to appellant, it was not relieved of the BLM manual require-ment to mail them by certified mail. On August 8, 1985, BLM prepared a rental refund request and effectively rejected appellant's offer without further notice because the copies of the lease form had not been received.

Pursuant to the May 7 Notice, the copies were due to be returned within 30 days of receipt, in this case June 10, 1985. The May 22, 1985, Notice was a copy of the May 7 letter with the added instruction that the copies
be returned "as quickly as possible." There is no reference in the May 22 Notice that the lease forms continued to be due within 30 days of receipt
of the May 7 Notice; indeed, at the top of the notice, under the date May 7, 1985, BLM typed and circled in red: Re-Sent May 22, 1985. Appellant may reasonably have expected that she had 30 days from receipt of the May 22, 1985, Notice to return the forms. However, a filing date cannot be ascribed because the May 22 Notice was not sent by certified mail. Under the circum-stances of this case, it is apparent that BLM effectively extended the time for filing the copies. Moreover, having failed to send the forms by cert- ified mail, BLM cannot establish when the copies were received to justify rejection of appellant's offer for failing to timely file required documents.

We therefore hold the May 22 Notice operated to extend the 30-day fil- ing period set forth in the May 7, 1985, Notice. Since there is nothing in the record to establish the new filing time, it was improper for BLM to reject appellant's lease offer pursuant to 43 CFR 3112.5-1(c) without fur- ther notice.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.l, the decision appealed from is reversed.

Gail M. Frazier
Administrative Judge

I concur:

Wm. Philip Horton
Chief Administrative Judge

102 IBLA 42

SPECIAL CONCURRENCE OF AJ ARNESS, 102 IBLA 43 THROUGH 45, MISSING.